IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-07-2007

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL No.1528 OF 2001

K.Balakrishnan ... Appellant

-vs-

1.Hotel Tamilnadu,
a Unit of the Tamilnadu Tourism Development
Corporation Ltd.,
Ootacamund,
Nilgiris,
rep.by its Regional Manager.

2.The Labour Officer,
Ootacamund (Authority under the
Tamilnadu Catering Establishments Act),
Ootacamund. ... Respondents

Appeal against the order, dated 17.08.2000, made in W.P.No.17494 of 1993 the file of this Court. This petition presented to this Court under Article 226 of constitution of India to issue a writ of certiorari calling for the records of the first respondent order No.Pa.Mu.9331 of 1992 dated 9.3.1993 and quash the same.

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For appellant : Mr.V.Ajoy Khose
For respondent 1 : Mr.Mr.M.Vijayan,
for M/s.King & Partridge

For respondent 2 : Mr.K.Balakrishnan,
Addl.Govt.Plealder.

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J U D G M E N T

S.PALANIVELU,J.

Appellant was working as a Cook in the first respondent hotel from 1984. On 22.06.1988, the first respondent management shot a show cause notice, requiring the appellant to submit his explanation, for an irregularity, which he committed on 21.06.1988, during the course of his duty. It was stated therein that without kitchen order token (KOT), he prepared and sent some food items through one Vijayan, who was a casual labourer, to the Bar Room, where certain individuals were consuming alcohol. One K.Shanmugasundaram was the Bar In-charge at the relevant time. The items, said to have been pilfered, were : (i) Chicken Fry - 4 plates - Rs.52/-; (ii) Chicken Biryani - 4 plates - Rs.60/- and (iii) Vegetable Biryani - 2 plates - Rs.20/-, costing Rs.132/-. It was further stated that even after collecting Rs.132/- from the customer, the above said staff had not remitted the amount by preparing a bill and the appellant herein misappropriated the amount. On the same day, the management issued another proceedings, suspending the appellant from service with effect from 24.06.1988, as the appellant had misappropriated Rs.132/-. It was mentioned in the proceedings that since there was no KOT or bill, one Sesil Kumar, Assistant Manager, who was in-charge of the catering department, complained the matter to the Chief Manager, who, along with one Thimmiah, who came from Head Office to impart training to the hotel staff, enquired the appellant and one Shanmugasundaram. At that time, both of them admitted the irregularity they committed. Further, after the said inquiry, on 22.06.1988, at about 04.00 p.m., the appellant paid Rs.60/- alone and prepared a bill. It was also ordered to conduct a departmental enquiry. For the show cause notice, the appellant submitted an explanation, stating that Vijayan came to him and, as per his direction, he prepared four plates of chicken biryani immediately for some VIPs, who were consuming liquor in the Bar, and entrusted to the said Vijayan, under the impression that the persons, who consumed liquor, might become aggressive. It was further explained that while he was handing over the food items to Vijayan, he asked him to obtain KOT or bill, for which he responded in the affirmative and he was also under the impression that Vijayan might have obtained KOT or bill properly; but, only on 22.06.1988, in the afternoon, while the manager enquired him, he came to know of the facts; it was the existing practice that even without KOT, while the restaurant staff requested to supply the food items, he used to prepare and give them and subsequently

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the value of the food items would be brought to bill and, on that premise alone, he handed over four plates of chicken biryani to Vijayan; non-payment of the value of the food items was only on the part of Vijayan and that he had not misappropriated the amount, by supplying chicken fry and vegetable biryani.

2. Not content with the explanation of the appellant, the management issued a charge sheet, by proceedings, dated 04.07.1988, for which the appellant submitted an explanation, reiterating the averments, which he mentioned in his explanation to the show cause notice. The officer in-charge of the disciplinary proceedings conducted a domestic inquiry and submitted a report to the management on 19.08.1988, holding that all the charges were proved against the delinquent/appellant. Thereupon, on 05.09.1988, the management issued a second show cause notice to the appellant, calling for explanation, proposing to dismiss him from service. After the submission of a representation, the appellant was dismissed from service on 30.09.1988.

3. Thereafter, the appellant raised an industrial dispute before the Labour Officer, Ooty, requesting for reinstatement with back wages and continuity of service. The said Labour Officer, not accepting the decision arrived at by the management on the strength of the domestic inquiry report, by his proceedings dated 09.03.1993, directed the management to reinstate the workman in service. Hence, the management preferred a writ petition before this Court, which ended in its favour, leading to the filing of this Writ Appeal, at the instance of the workman.

4. Learned counsel for the appellant/workman very much stresses that the action of the management is vindictive against a poor cook, who was in the habit of handing over food items to the customers even without KOT and his previous service records were clean.

5. Conversely, learned counsel for the respondent/management would strenuously contend that it is a typical misconduct on the part of the workman, in involving misappropriation of the amount equal to the value of the food items, which he passed on from the kitchen to the Bar Room, without adhering to the regulated procedure of the management.

6. At the outset, it is to be seen, whether there was any practice for taking food items outside the kitchen, without a bill or KOT. The answer would be in the negative. There is

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nothing on record to show that there was such a practice. Since the transactions involve fetching of revenue to the management, which is a public institution, every pie should be accounted by the person, who is dealing with the same. In case such happenings are allowed to continue, the management would definitely incur huge loss.

7. In order to appreciate the contentions of both sides, it is necessary to highlight certain salient features in the inquiry report and to reach an appropriate conclusion in this matter.

8. Sasil Kumar, Assistant Manager, stated that while the casual labourer, namely, Vijayan was carrying the food items, he asked him whether KOT was prepared for it, for which he responded otherwise. While he was subjected to cross-examination by the delinquent, he responded that it was an important duty to prepare KOT as per the requirements of the customers and to send it to the kitchen room. Vijayan stated before the enquiry officer that whenever customers order food items, only after preparing KOT, he would supply them. While he was crossexamined by the delinquent, he stated in definite terms that without KOT he would not supply anything. One Thimmappa, a lecturer in catering department, who came to Udagamandalam, for imparting training to the staff of the management with regard to the preparation of food items and the procedure to be adopted while taking the food items outside the kitchen, stated that he instructed the staff that no food items should go out from the kitchen without KOT. The Chief Manager of the hotel also stated before the enquiry officer that even if VIPs visit the hotel, food items would not be supplied to them without KOT.

9. The above said features would go a long way to show that without preparation of KOT or bill specifying the food items, the food items would not come out from the kitchen. When that be so, it is not at all acceptable that the appellant sent the food items without KOT. By means of statements of witnesses before the enquiry officer, it comes to light that it is the procedure being followed in the management that food items would be supplied only on KOT and bill. However, it is an admitted case of the appellant that he supplied food items without getting KOT or bill and, only on the next day, he remitted a sum of Rs.60/-, being the value of four plates of chicken biryani, that too after he was enquired by the Manager. Till then i.e., 22.06.1988, he had not informed the matter either to the Assistant Manager or the Chief Manager. This

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shows the dereliction of duty on the part of the appellant. Even though he had been working there for about four years, he did not follow the settled procedure.

10. When an institution is run, adopting the regulated procedure, any deviation, violation or attempt to violate such procedure would certainly constitute misconduct on the part of the individuals concerned. It is the bounden duty of the staff to abide by the rules and regulations of the establishment, for its smooth functioning. The carelessness on the part of the workman, which would be prejudicial or detrimental to the administration of the institution, has to be viewed seriously. Any deviation of procedure, adopted for usual course of business, will pave way for revenue loss to the institution. If such staffers, indulging in the like misconduct, are allowed to continue in service, there would be a total deterioration in the conduct of the business.

11. The main thrust of the appellant that there was no *mala fide* intention on his part and the sending of food items without KOT or bill would not constitute any kind of misconduct, in our standpoint, is not acceptable. The learned single Judge, after considering the rival submissions, arrived at an appropriate conclusion that the claim of the workman was not tenable, which cannot be found fault with. Therefore, the order of the learned single Judge stands confirmed.

12. Writ Appeal fails and is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Labour Officer,
Ootacamund (Authority under the
Tamilnadu Catering Establishments Act),
Ootacamund.

2.Regional Manager
Hotel Tamilnadu,
a Unit of the Tamilnadu Tourism Development
Corporation Ltd.,Ootacamund,Nilgiris,

+1cc to M/s. King & Partridge, SR 47144
+1cc to Mr.D.Hariparantham, Advocate Sr 46632

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